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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,486	CATION NO.		Yoshihiko Morikawa	KAMMON 3.1-062 DIV	6983
530 7590 03/12/2004				EXAMINER	
		LITTENBERG,	KORNAKOV, MICHAIL		
KRUMHOL	Z & MEN	TLIK	ART UNIT	PAPER NUMBER	
600 SOUTH WESTFIEL			1746		

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Application No.   10/696,486   MORIKAWA ET AL.	V			jv .					
## Deficie Action Summary  ## Deficie Action  ## Deficie	- <b>K</b> •		Application No.	Applicant(s)					
Michael Komakov   1746	•		10/696,486	MORIKAWA ET AL.					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Repty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Eadercook of the ring by a swillow load for the procession of 37 CFR 1.136(a), in no event, however, may a reply be timely field  Eadercook of the ring by consided above the less than thirty (50) days, a roply whin the salutures minimum of thirty (30) days will be considered limits.  If the period for reply expected above to less than thirty (50) days, a roply whin the procession of the period for reply within the set or enterodial period for reply will, by attention to become AdMICONTO (55 LG 5 153).  If the period for reply within the set or enterodial period for reply will, by attention to the communication (50) and the period of the communication (50) and the period of the communication (50) and the period period of the communication (50) and the period of the communication (50) and the communication (50) and the communication (50) and the communication (50) and the communication is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1:17 Is/are rejected.  Claim(s) is/are allowed.  Claim(s) is/are epicted to.  3) Claim(s) is/are epicted to.  3) Claim(s) is/are objected to by the Examiner.  10) The specification is objected to by the Examiner.  10) The specification is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing shock(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is ma	Office Action S	ummary	Examiner	Art Unit					
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THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provision of 37 CPR 1.136(a). In no event, however, may a reply be timely filled after SIX (b) MXNTPS from the mailing date of this communication.  If the provision of the pr	The MAILING DATE o Period for Reply	f this communication appe	ears on the cover sheet with the	correspondence address					
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Application/Control Number: 10/696,486

Art Unit: 1746

## **DETAILED ACTION**

## **Double Patenting**

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- 2. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,544,436. Although the conflicting claims are not identical, they are not patentably distinct from each other because at **least one azole** of US'436 allows it to be 1,2, 3-azole as recited in the instant claim 9 or tetrazole as per instant claim 1.
- 3. In the telephone interview on 03/08/2004 Examiner suggested that the amendment is made to claims 1 and 9 to include the limitations of a composition allowed in the parent Application. This amendment was agreed upon with Applicants' representative. However, in light of the above discussed double patenting rejection claims should be amendment to exclude the 1,2,3-triazole as a first azole and only to leave tetrazole as a first azole of the composition.

Application/Control Number: 10/696,486

Art Unit: 1746

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kornakov whose telephone number is (571) 272-1303. The examiner can normally be reached on 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. KORNAKON

Michael Kornakov Examiner Art Unit 1746

March 8, 2003